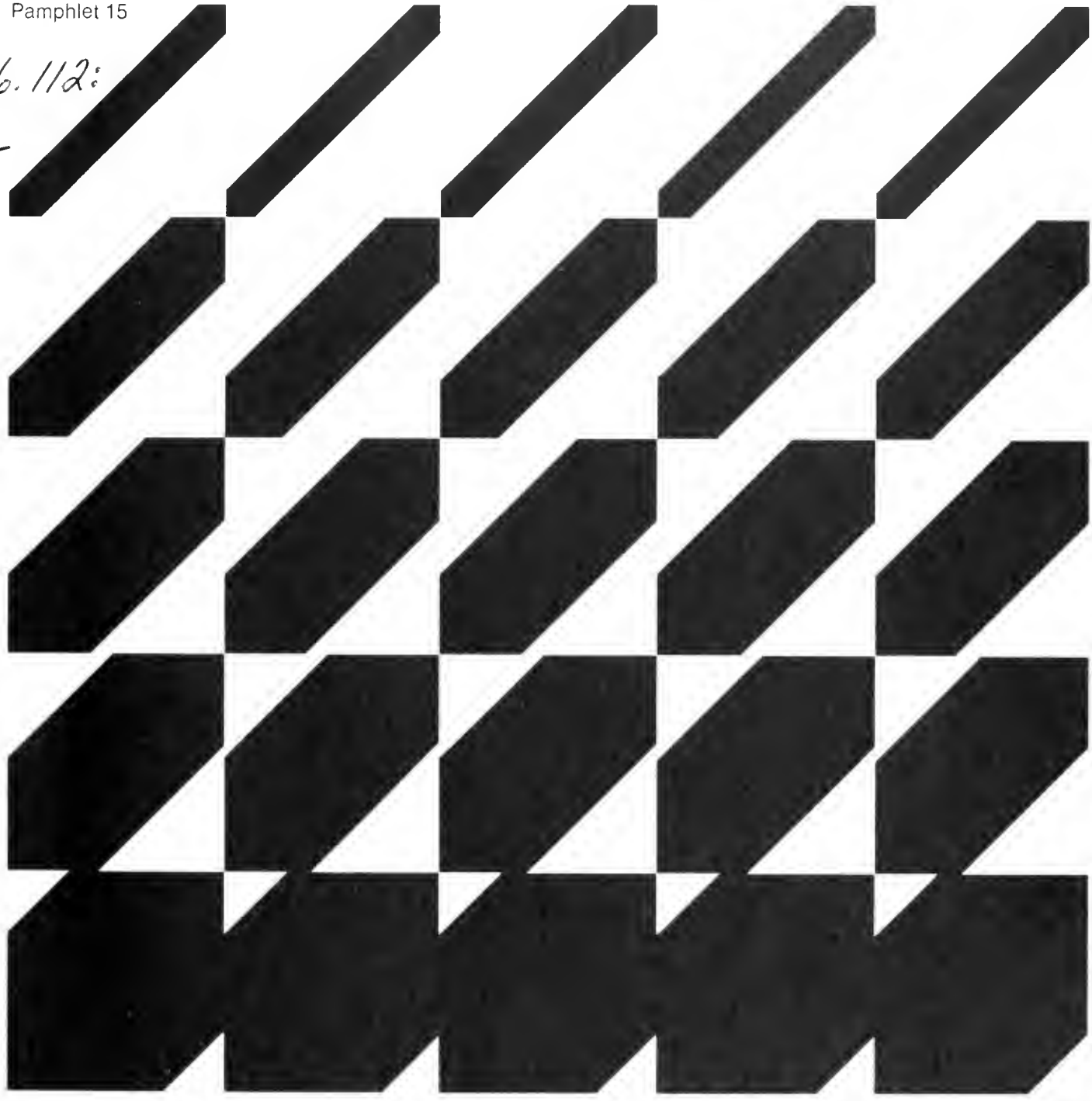
Laws ...n: From Protection to Equal Status for Women

U.S. Department of Labor
Employment Standards Administration
Women's Bureau
1976

Pamphlet 15




DEPARTMENT OF LABOR
UNITED STATES OF AMERICA

State Labor Laws in Transition: From Protection to Equal Status for Women

U. S. Department of Labor
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1976

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For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price 35 cents
Stock Number 029-002-00049-5

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Introduction

Rarely has legislation taken such a marked shift in form and emphasis as the laws applying to women workers. Early in the century special protections for women appeared to be the only means of achieving minimum standards in the workplace, even at the cost of excluding women from some kinds of profitable employment. Later women's increased concern to participate in the full range of job opportunities, and the possibility of improved standards for men and women brought a reevaluation of earlier laws.

This pamphlet summarizes laws of special interest to women and highlights trends that have become evident in the past dozen years. For example:

- State minimum wage laws increased in number and many States that passed such laws initially for women extended coverage to men. Legislatures and wage boards remained active in increasing minimum rates.
- State equal pay and fair employment practices legislation advanced rapidly after enactment of the Federal Equal Pay Act of 1963 and title VII of the Civil Rights Act of 1964.
- Some of the State "protective" laws, so called because they protected women from long working hours and strenuous or hazardous employment, were declared in direct conflict with Federal laws against sex discrimination because they limited women's opportunity to earn overtime pay or to win skilled jobs and promotions. This conflict was essentially resolved in the late sixties and early seventies by repeals and amendments of State laws, State and Federal administrative rulings, or court decisions. On the other hand, there has been considerable effort to extend to men — through legislation or administrative or judicial decision — other protective laws that conferred benefits only on women.

Laws vary from State to State. Historically State legislatures sometimes took the lead before Congress, sometimes followed Federal initiatives.

Although the focus of this pamphlet is on State laws, information is provided on their Federal counterparts to the extent needed to clarify the effect of the State enactments.

Appendix A includes basic provisions of title VII, guidelines on sex discrimination issued under that law, and discussion of some relevant court cases. Appendix B shows the current status of the State laws discussed. Special provisions or prohibitions applying only to minors are not noted in this pamphlet.

Note: This pamphlet was prepared by Jane Walstedt under the supervision of Ruth Shinn, Branch of Legislative Analysis.

The data, verified July 1, 1975, remain subject to rapid change. The latest information on any particular State can be secured from its labor department, human rights commission, or attorney general.

Minimum Wage

Forty States, the District of Columbia, and Puerto Rico have minimum wage laws with minimum rates currently in effect. Most of these laws now apply to both men and women, but those of 3 States apply only to women.

The minimum wage laws are of two basic types: those which contain a minimum in the law itself (statutory rate) and those which empower wage boards to set minimum rates by occupation or industry. Some States combine the two types by enacting a statutory minimum for most employment and providing wage boards to set rates for certain occupations or industries. Only the legislature can change statutory rates, but wage boards may modify rates or issue wage orders for new occupations or industries after complying with specified administrative procedures.

State minimum rates vary widely — from a low of $1 to a high of $2.60 an hour. Some States provide for automatic upward adjustment if the Federal rate is increased.

The Fair Labor Standards Act (FLSA), as amended in 1974, set a minimum wage of $2.00/hr. beginning May 1, 1974, $2.10/hr. beginning January 1, 1975, and $2.30/hr. beginning January 1, 1976 for most covered employees (see also p. 6). States may set rates higher than the Federal rate; but if a State rate is lower than that set by the FLSA, the Federal rate prevails for all employees who come under its coverage. The FLSA is administered by the U.S. Department of Labor.

There is considerable variation in coverage of State minimum wage laws. Only a few States cover farm employment and private household work (see below). Some exempt such groups as employers with less than a specified number of workers; nonprofit, religious, and charitable institutions; workers in specified occupations; and workers covered by the FLSA. On the other hand, State minimum wage laws often benefit workers in certain local trade and small service establishments not covered by the Federal law.

As of September 1974, State minimum wage laws or orders gave protection to 5,049,000 nonsupervisory employees not covered by the minimum wage provisions of the FLSA. Still 4,774,000 nonsupervisory employees were not assured a minimum wage by either State or Federal law.

Historical Record

The first State minimum wage legislation was a "recommendatory" law in Massachusetts in 1912, which could be enforced by no more than making investigations and publishing names of offenders in the newspapers. Between 1912 and 1923 minimum wage laws were enacted in 14 additional States, the District of Columbia, and Puerto Rico, although two were repealed soon after enactment.

For many years State minimum wage legislation was designed almost exclusively for the protection of women and minors, and did much to raise their extremely low pay in manufacturing and trade and service industries. Most States chose the wage board method of establishing rates during the early years.

Legislative progress was interrupted by a 1923 decision of the U.S. Supreme Court declaring the District of Columbia law unconstitutional on the ground that it deprived liberty of contract in personal employment. *Adkins* v. *Children's Hospital,* 261 U.S. 525.

A struggle ensued. Several State laws were declared unconstitutional by State or Federal courts, and others became inoperative from lack of wage board activity or appropriations. No new minimum wage laws were passed for 10 years.

Then, despite the Supreme Court decision, the depression years of the 1930's brought a revival of interest in minimum wage legislation. States sought new formulations to achieve the minimum wage objective, and these, too, were struck down. The issue was not resolved until 1937, when the Supreme Court expressly reversed its *Adkins* decision and upheld the constitutionality of the minimum wage law in the State of Washington. *West Coast Hotel* v. *Parrish,* 300 U.S. 379.

At this point laws that had been held unconstitutional were re-examined. Some of them were declared valid, while others were passed in new form. Several States enacted minimum wage legislation for the first time. Of the 29 jurisdictions that had enacted minimum wage legislation at some time, 22 States, the District of Columbia, and Puerto Rico had minimum wage laws in effect in 1938 when Congress enacted the FLSA (see chart A). The Federal law set a minimum rate for women and men and required premium pay for weekly overtime. Of the early State laws, only the short-lived one in Oklahoma had applied to men as well as women.

During the ensuing decades, many States have passed minimum wage laws for the first time and others extended and strengthened their early enactments. Characteristic modifications have been:

Extension of coverage —
to men;
to additional occupations, for example, private household workers, farm laborers, and employees receiving gratuities; and
to small establishments.

Establishment of a statutory rate in addition to or instead of wage board provisions.

Strengthening of enforcement.

Increase of the statutory rate, sometimes exceeding the Federal rate.

Provision for increasing the State minimum rate whenever the Federal minimum increases, in the same amount and on the same date.

Revision of wage orders.

Addition of premium pay for overtime.

The status of those State minimum wage laws which cover women but not men was altered by the enactment of title VII of the Civil Rights Act of 1964, a Federal law which prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin (see Appendix A).

Roster of Minimum Wage Jurisdictions

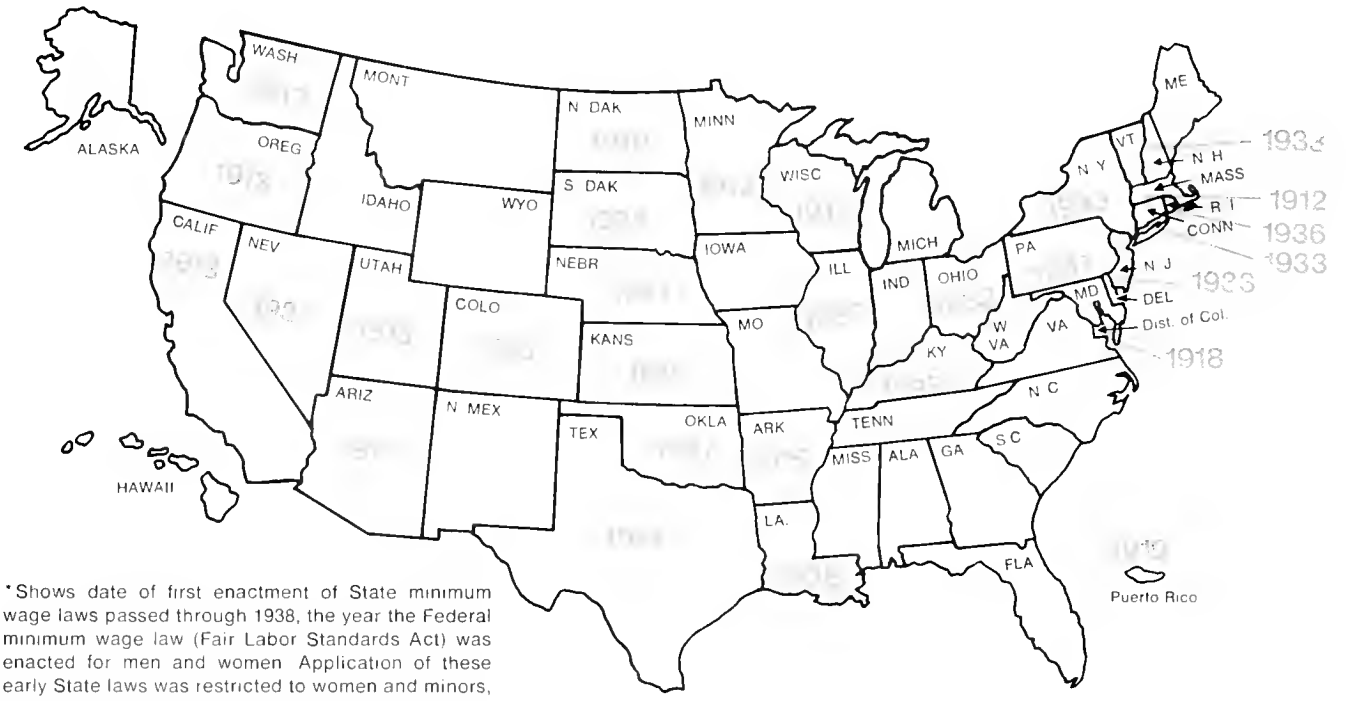
The jurisdictions with minimum wage laws in effect are:

Alaska	Maryland	Oklahoma
Arkansas	Massachusetts	Oregon
California	Michigan	Pennsylvania
Colorado	Minnesota	Puerto Rico
Connecticut	Montana	Rhode Island
Delaware	Nebraska	South Dakota
District of Columbia	Nevada	Texas
Georgia	New Hampshire	Utah
Hawaii	New Jersey	Vermont
Idaho	New Mexico	Virginia
Illinois	New York	Washington
Indiana	North Carolina	West Virginia
Kentucky	North Dakota	Wisconsin
Maine	Ohio	Wyoming

Kansas and Louisiana have wage board laws, but no minimum rates have been set. Arizona, which had a minimum wage for women and minors, recently repealed coverage of women. Seven States — Alabama, Florida, Iowa, Mississippi, Missouri, South Carolina, and Tennessee — do not have minimum wage laws.

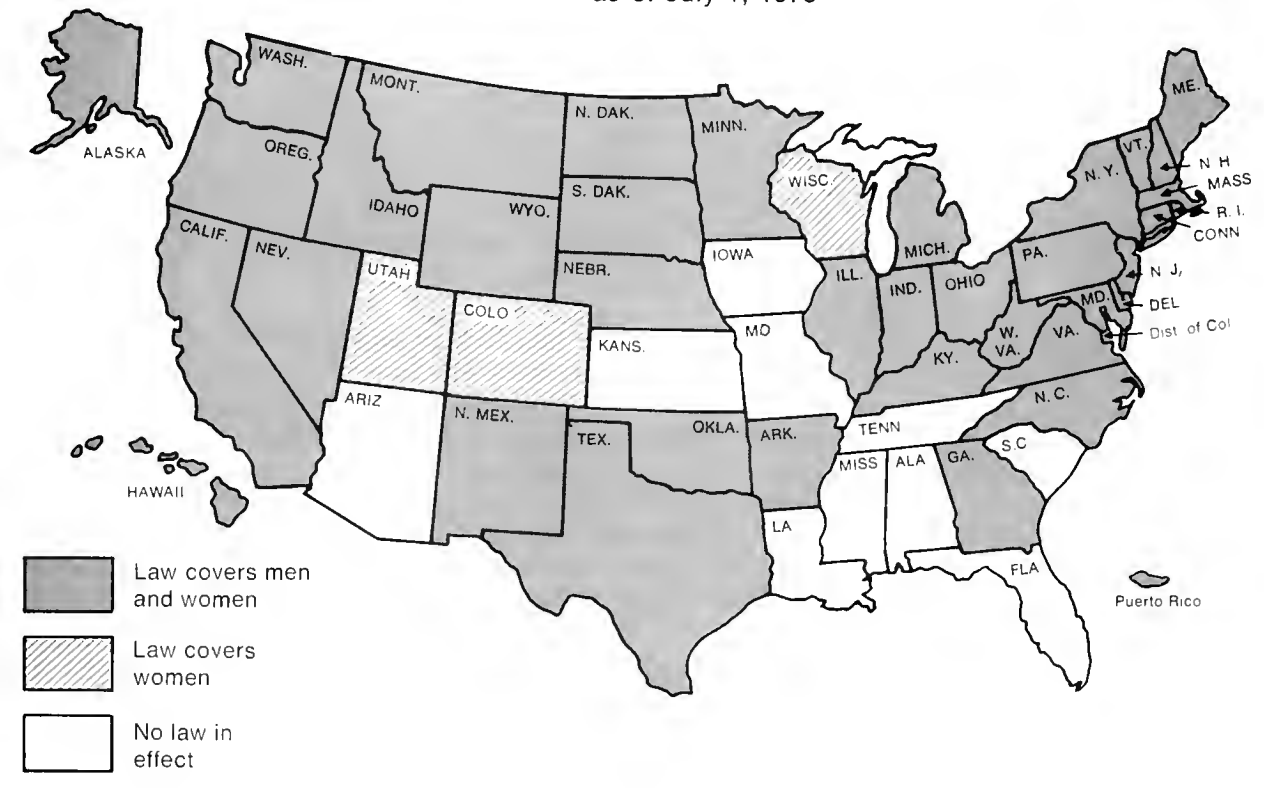
Chart A. State Minimum Wage Laws Extend Coverage to Men

Early State Minimum Wage Laws*



*Shows date of first enactment of State minimum wage laws passed through 1938, the year the Federal minimum wage law (Fair Labor Standards Act) was enacted for men and women. Application of these early State laws was restricted to women and minors, except in Oklahoma, where coverage of men was declared unconstitutional in 1939 on the basis of technical defect.

Minimum Wage Laws In Effect
as of July 1, 1975



Type of Law and Employee Covered

Nine States, the District of Columbia, and Puerto Rico have laws that set a statutory rate and also provide for wage boards to establish occupation or industry rates. Twenty-six States have statutory rate laws only. Minimum rates set by wage boards are in effect in 5 States.

The following lists show the type of law and employee covered:

a. Statutory rate and wage board law for:

Men and Women

Connecticut
District of Columbia
New Hampshire
New Jersey
New York
Ohio
Oregon
Puerto Rico
Rhode Island
Vermont
Washington

b. Statutory rate law only for:

Men and Women

Alaska
Arkansas
Delaware
Georgia
Hawaii
Idaho
Illinois
Indiana
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Montana
Nebraska
Nevada
New Mexico
North Carolina
Ohio
Oklahoma
Pennsylvania
South Dakota
Texas
West Virginia
Wyoming

c. Wage board law only for:

Men and Women

California
North Dakota

Women[1]

Colorado
Utah
Wisconsin

Coverage of Workers in Private Households and in Farm Employment

In recent years workers in private households and in agriculture — workers with little previous coverage — have increasingly come under coverage of State minimum wage laws.

The Federal Fair Labor Standards Amendments of 1974 extended a minimum wage to private household workers starting at $1.90/hr. as of May 1974 and rising to $2.00/hr. as of January 1975, $2.20/hr. as of January 1976, and $2.30 as of January 1977. The minimum wage of agricultural employees, previously covered under the act, was raised from $1.30/hr. to $1.60/hr. as of May 1974, to $1.80/hr. as of January 1975, $2.00/hr. as of January 1976, $2.20/hr. as of January 1977, and $2.30/hr. as of January 1978.

The only States with minimum wage coverage of private household workers in households with one employee are:

California
Maryland
Massachusetts
Minnesota
Montana
Nevada
New Jersey
New York
Ohio
South Dakota
Wisconsin

In Kentucky, households with at least two private household employees are covered.

Although statutory minimum wage laws in Arkansas, Michigan, Nebraska, and West Virginia do not exempt private household workers, most household workers in these States are not covered because of high numerical exemptions. Wage board laws in Colorado, North Dakota, and Utah do not exempt private household workers, but no wage orders covering them have been issued.

The following jurisdictions have a minimum wage rate applicable to at least some farm employment:

California
Connecticut
Hawaii
Massachusetts
Michigan
Minnesota
Montana
Nevada
New Jersey
New Mexico
New York
Ohio
Puerto Rico
South Dakota
Texas
Wisconsin

Premium Pay for Overtime

Twenty-nine States, the District of Columbia, and Puerto Rico have laws or regulations in effect that provide pay at a premium rate for overtime. These overtime requirements are usually in minimum wage statutes or wage orders, but some are in hours laws.

Most overtime provisions exempt farm employment. Some States specify other exemptions, such as employers covered by or "in compliance with" the Federal overtime standard. However, as in the case of minimum wage, State coverage is sometimes broader than that of the Federal law.

The Federal requirement for most nonfarm workers covered by the minimum wage provisions of the FLSA is 1½ times an employee's regular rate after 40 hours a week.

While New York requires payment of 1½ times the employee's *minimum* hourly rate after a specified number of weekly hours, the other jurisdictions with overtime provisions stipulate 1½ times the *regular* rate after a specified number of daily and/or weekly hours.

The following list of premium pay requirements in effect shows the type of law and hours after which premium pay is required. Where hours are shown in a

[1] See Appendix A for Federal guidelines and rulings on State labor laws that confer benefits on women only

	Minimum Wage Law		Hours Law	
	Daily	Weekly	Daily	Weekly
Alaska	8	40		
Arkansas			8	7th consecutive day W
California		40 W	8	40/48 W
Colorado		40/42 W		
Connecticut		40/48		
District of Columbia		40		
Hawaii		40		
Kentucky		40		
Maine		40		
Maryland		40		
Massachusetts		40		
Michigan		46		
Minnesota		48		
Montana		40		
Nevada			8	40
New Hampshire	8			
New Jersey		40		
New Mexico		48		
New York		40/44		
North Carolina				50
North Dakota		48		
Ohio		40		
Oregon		40		
Pennsylvania		40		
Puerto Rico[1]	8	40/44	8	40/48
Rhode Island		40		
Vermont		40		
Washington		40		
West Virginia		46		
Wisconsin			9	48 W
Wyoming			8	48 W

[1] Time and a half the regular rate after 8 hours daily and 40 hours weekly and double time after 48 hours, except for certain industry wage orders which provide for double time after 8 hours daily and 40 or 44 hours weekly. For women, triple the regular rate after 12 hours daily and 72 hours weekly if not covered by FLSA, or after 60 hours weekly if covered by FLSA.

W=Applicable to women only.

range, variations exist based on occupation or industry or on emergency conditions. Because of these variations, the agency administering a law should be consulted for information about specific situations.

As shown in Appendix A, one Federal appeals court has ruled that the Arkansas premium pay provision is applicable also to men; however, another appeals court refused to follow that decision with regard to California's overtime requirements in an hours law and wage order applicable to women only, and ruled that they could not be enforced. (The court is currently allowing their enforcement pending the outcome of an appeal to the U.S. Supreme Court; this followed nullification in another case of new wage orders requiring premium pay for men as well as women.) Rulings by courts or attorneys general in Idaho, Texas, and New Mexico also struck down premium pay requirements in hours laws for women rather than adopting the concept that, under State or Federal antidiscrimination provisions, the benefit should be extended to men. In New Mexico, although women lost their entitlement to overtime pay after 40 hours, they regained it partially through enactment of a requirement for premium pay after 48 hours in the minimum wage law applicable to both men and women.

Equal Pay

Thirty-seven States have laws applicable to private employment that prohibit discrimination in rate of pay based on sex (see chart B). An additional 8 States, the District of Columbia, and Puerto Rico do not have a separate equal pay law but do prohibit pay discrimination based on sex in their fair employment practices (FEP) or civil rights law. Only 5 States have neither an equal pay law nor an FEP law covering sex discrimination.

The Federal Equal Pay Act was an amendment to the FLSA in 1963. With amendments in 1972 and 1974 it has broad coverage in public and private employment.

Historical Record

Public attention was first sharply focused on equal pay for women during World War I, when large numbers of women were employed in war industries in the same jobs as men, and the National War Labor Board enforced the policy of "no wage discrimination against women on the grounds of sex." In 1919, 2 States—Michigan and Montana—enacted equal pay legislation. For nearly 25 years these were the only States with such laws.

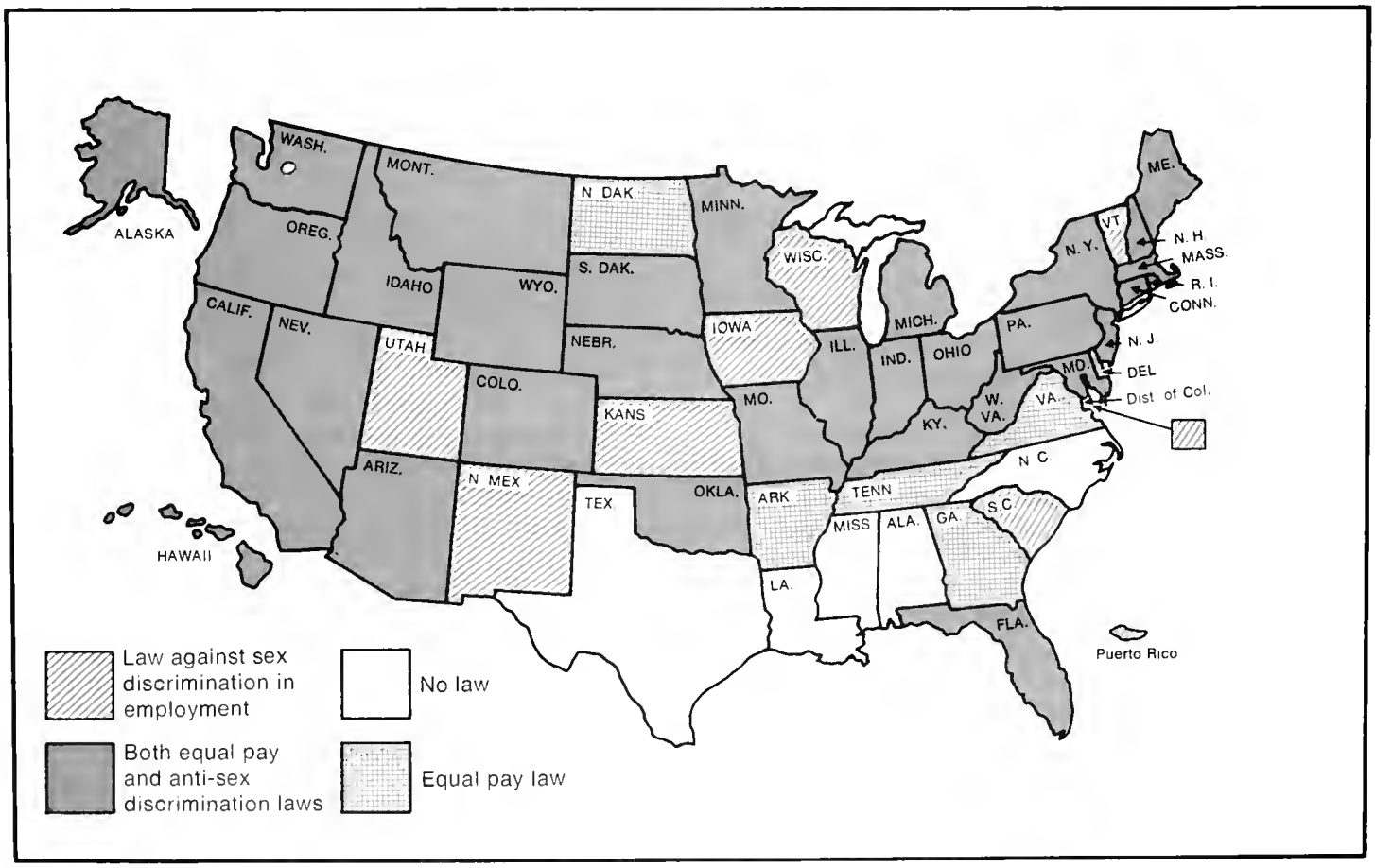
Great progress in the equal pay field was made during World War II, when again large numbers of women entered the labor force, many of them in jobs previously held by men. Government agencies supported the principle of equal pay by establishing policies and regulatory orders. Employers, unions, organizations, and the general public pressed for the removal of wage differentials as a means of furthering the war effort. Ten States passed equal pay laws during the war or the years immediately following.

Twenty-two States had equal pay laws and 2 others included a prohibition of sex discrimination in their FEP acts by 1963, when Congress passed the Federal Equal Pay Act. From this point on, several States enacted equal pay laws, either separately or as part of a minimum wage law, while others moved immediately to the broader FEP type of law. Tennessee and Virginia were the most recent States to enact equal pay laws (1974).

Equal pay laws are usually enforced by the State labor department or industrial commission; FEP laws, often part of broader human rights laws, are usually administered by a human rights commission.

Chart B. Most States Prohibit Sex Discrimination in Employment

as of July 1, 1975



Roster of Equal Pay States

The States with equal pay laws applicable to most kinds of private employment are:

Alaska	Maine	Ohio
Arizona	Maryland*	Oklahoma*
Arkansas	Massachusetts	Oregon
California	Michigan*	Pennsylvania
Colorado*	Minnesota	Rhode Island
Connecticut	Missouri	South Dakota
Florida*	Montana*	Tennessee*
Georgia*	Nebraska*	Virginia
Hawaii	Nevada	Washington
Idaho*	New Hampshire	West Virginia
Illinois*	New Jersey*	Wyoming
Indiana*	New York	
Kentucky*	North Dakota*	

The jurisdictions that have no equal pay law but do prohibit pay discrimination based on sex in their fair employment practices law are:

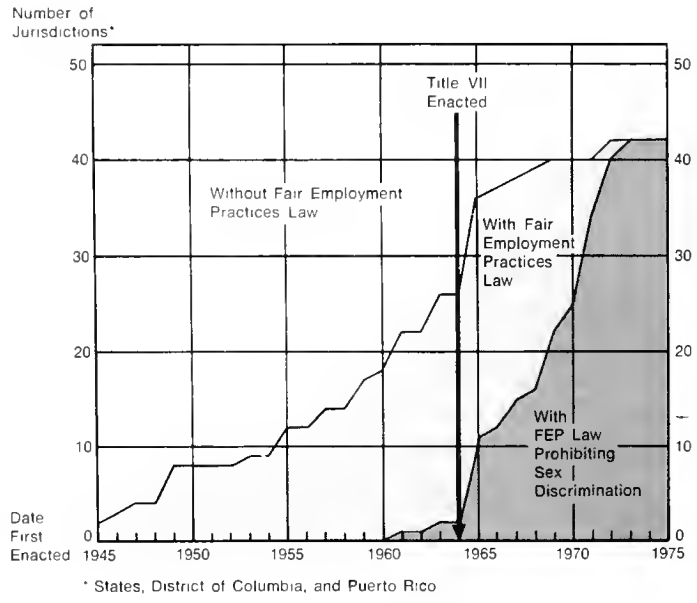
Delaware	New Mexico	Vermont
District of Columbia	Puerto Rico	Wisconsin
Iowa	South Carolina	
Kansas	Utah	

States that have neither an equal pay law nor an FEP law covering sex discrimination in private employment are:

Alabama	Mississippi	Texas
Louisiana	North Carolina	

However, Texas has an equal pay law applicable to public employment.

Chart C.
Growth of Fair Employment Legislation and the Impact of Title VII
(through July 1, 1975)



Title VII of the Federal Civil Rights Act of 1964 is the major Federal fair employment law. It prohibits discrimination based on race, color, religion, sex, or national origin. It is administered by the Equal Employment Opportunity Commission (EEOC) (see Appendix A).

Fair Employment Practices

Forty States, the District of Columbia, and Puerto Rico have broad FEP laws (or FEP sections in human rights laws) covering private employment. These vary considerably in coverage, unfair practices specified, and provisions for conciliation or enforcement. From early prohibitions against employment based on race, color, religion, and national origin, the laws have come to include sex, often age, and, in some recent instances, marital status and physical or mental handicap.

Sex Discrimination

All the broad State FEP laws include a provision on sex discrimination (see chart C). Prior to enactment of title VII in 1964 only 2 States—Hawaii and Wisconsin—prohibited sex discrimination in employment, although 25 prohibited race discrimination.

A number of cities and counties also have established human rights or fair employment practices commissions. Many of the State and local commissions have enforcement powers similar to those of the EEOC and have adopted in whole or in part certain policy positions of the Federal agency, including the sex discrimination guidelines (see Appendix A). The EEOC is required by section 706 of the Federal law to give a State or local office a first opportunity to process a discrimination charge if the agency implements an adequate antidiscrimination law. The agency has 60 days (120 days for an agency that has been operating less than a year) to process a charge before jurisdiction returns to the EEOC. Further, in making its own determinations, the EEOC is to give substantial weight to the final findings and orders of designated "706" agencies.

*Law applicable also to public employment. A Massachusetts law has an elective equal pay provision, applicable to city or town employees who are in the classified civil service. The Tennessee law is applicable to employees of the State but not of its political subdivisions.

The major jurisdictions with laws which cover sex discrimination in private employment are indicated below (those to whose enforcement agencies the EEOC defers are shown in caps):

ALASKA	KENTUCKY	OHIO
ARIZONA	MAINE	OKLAHOMA
CALIFORNIA	MARYLAND	OREGON
COLORADO	MASSACHUSETTS	PENNSYLVANIA
CONNECTICUT	MICHIGAN	Puerto Rico
DELAWARE	MINNESOTA	RHODE ISLAND
DISTRICT OF COLUMBIA	MISSOURI	South Carolina
Florida	MONTANA	SOUTH DAKOTA
Hawaii	NEBRASKA	UTAH
IDAHO	NEVADA	Vermont
ILLINOIS	NEW HAMPSHIRE	WASHINGTON
INDIANA	NEW JERSEY	WEST VIRGINIA
IOWA	New Mexico	WISCONSIN
KANSAS	NEW YORK	WYOMING

The EEOC also defers to enforcement agencies of the following:

Baltimore (Md.)	Minneapolis (Minn.)	Seattle (Wash.)
Bloomington (Ind.)	New York (N.Y.)	Springfield (Ohio)
Dade County (Fla.)	Omaha (Nebr.)	Tacoma (Wash.)
East Chicago (Ill.)	Philadelphia (Pa.)	Virgin Islands
Gary (Ind.)	Rockville (Md.)	

The States which have *no* FEP law covering private employment are:

Alabama	Mississippi	Texas
Arkansas	North Carolina	Virginia
Georgia	North Dakota	
Louisiana	Tennessee	

Laws in at least 2 States—North Carolina and Texas—prohibit discrimination based on sex in State and/or local government employment only. The South Carolina State Human Affairs Commission is limited to using conciliation and persuasion in the private sector but has full enforcement authority against discrimination in public employment. While many of the laws prohibiting sex discrimination in private employment also protect public employees, some State and local jurisdictions use civil service regulations or special orders of a Governor or mayor to do so.

It is interesting to note that even where both Federal and State FEP laws are in effect a local ordinance and human relations commission may be very powerful. In a landmark case the U.S. Supreme Court upheld a city commission's order that a newspaper stop maintaining separate "help wanted" columns designated "Jobs—Male Interest" and "Jobs—Female Interest." The Court denied that the order infringed the First Amendment rights of the newspaper to free expressions of its views. *Pittsburgh Press Co.* v. *Pittsburgh Commission on Human Relations,* 413 U.S. 376 (1973).

Age Discrimination

Thirty-four States, the District of Columbia, and Puerto Rico have laws prohibiting age discrimination in private employment. These laws are of particular concern to women because many women enter or reenter the labor market—or shift from part-time employment—after an extended period of major family responsibility. Some age discrimination prohibitions are part of the FEP law and are administered by a human rights commission; others are administered by the commissioner of labor. Age limits for protected persons vary widely.

> ***The Federal Age Discrimination in Employment Act, enacted in 1967 and amended by the Fair Labor Standards Amendments of 1974, prohibits discrimination against persons 40 to 65 years of age in private and public employment by employers of 20 or more, labor organizations, and employment agencies.***

The jurisdictions which prohibit age discrimination in private employment are listed below (asterisk indicates that age discrimination in public employment is also prohibited):

Alaska*	Kentucky*	New York*
California*	Louisiana	North Dakota
Colorado	Maine*	Ohio
Connecticut*	Maryland*	Oregon*
Delaware*	Massachusetts*	Pennsylvania*
District of Columbia*	Michigan*	Puerto Rico
Georgia	Montana*	Rhode Island*
Hawaii	Nebraska*	South Carolina*
Idaho*	Nevada*	Utah*
Illinois*	New Hampshire*	Washington*
Indiana*	New Jersey*	West Virginia*
Iowa*	New Mexico*	Wisconsin

The following States have *no* age discrimination laws covering private employment:

Alabama	Mississippi	Texas
Arizona	Missouri	Vermont
Arkansas	North Carolina	Virginia
Florida	Oklahoma	Wyoming
Kansas	South Dakota	
Minnesota	Tennessee	

However, at least 5 of these—Florida, North Carolina, Oklahoma, South Dakota, and Texas—have laws prohibiting age discrimination in public employment.

Title VII, A Turning Point

The enactment of title VII, the equal employment opportunity section of the Federal Civil Rights Act of 1964, influenced the direction of State legislative activity applicable to women workers (see Appendix A).

Early in the century as women first entered the work force in significant numbers, working conditions were very rigorous, wages were very low, and women had neither the organization nor the experience to bargain with strength. State labor legislation in this period

emphasized minimum wages, equal pay, and protection against a harsh working environment. "Protective" standards for women only were not enacted on the Federal level. State laws which limited the hours of work or the weight that could be lifted, though supported by many women's groups, posed problems for those women who did not want these restrictions to exclude them from overtime, nightwork, and certain better paying occupations. As the workplace changed with automation, and as women had temporary experience in more skilled jobs during wartime, many persons saw that women's low earnings were not entirely the result of unequal pay for comparable work. More often the problem was that women were permitted entry into only a few traditionally low-paid job categories.

As the civil rights movement gained momentum during the 1960's, significant gains for minorities were accompanied by a renewed interest in equal rights for women. The prohibition of sex discrimination was included in title VII, and the focus of State legislation began to shift away from protective laws for women toward equal employment opportunity.

A sometimes painful transition period found some women in situations where they would have preferred no change in women's labor laws. Other women, however, expected that women's special benefits would be extended to men and restrictions against nightwork, weightlifting, or the jobs in which women could work would be overthrown.

The agency administering title VII (EEOC) gradually developed a position supporting this expectation in amicus briefs and in formal guidelines. States varied in their response to title VII. Several, including some that enacted FEP laws banning sex discrimination, retained their women's labor laws.

This, however, raised complicated legal issues. Where State and Federal laws are in conflict and the Federal law does not specify that the State standard will prevail, the Federal prevails. The question as to which State laws conflict with Federal law is one that must be decided by the courts, though courts give great deference to Federal agency interpretations. As noted in Appendix A, courts generally have upheld the EEOC position that title VII supersedes State laws restricting women's employment but have differed with each other regarding extension of women's special benefits to men.

While a transition to equal employment opportunity laws and extension or removal of special laws for women workers is not yet complete, most States have passed beyond the period of widespread uncertainty and litigation.

Minimum wage laws give the best example of benefits for women being extended to men. When title VII was enacted 26 years after passage of the Federal FLSA requiring minimum wage and overtime pay without regard to sex, almost half the State minimum wage laws—15 out of 32—applied to women only. As noted earlier, one State repealed coverage of women. However, extensions or new enactments in other jurisdictions have resulted in 39 laws (including those of the District of Columbia and Puerto Rico) that cover both men and women and only 3 that are restricted to women.

There have been comparable gains for men and women in premium pay for overtime since enactment of title VII. In 1964 half of the dozen or so jurisdictions which had premium pay requirements in minimum wage laws or wage orders for one or more occupations or industries covered women only. Many State legislatures have amended or enacted such standards to cover both sexes, and none have repealed them. Now the benefit is provided in 23 States, the District of Columbia, and Puerto Rico for both men and women, and is restricted to women in only 2 States.[2]

When premium pay for women was provided in an hours law, States frequently repealed it and put an overtime provision in a minimum wage law for both sexes. The new law was sometimes more generous than the old but in one or two instances provided a lesser benefit. In 2 States, however, premium pay in an hours law for women was lost through administrative or judicial rulings without legislation to replace it. North Carolina, which had premium pay for men only, amended the law to extend overtime to women. Of the 7 overtime pay provisions in an hours law in 1975, 4 are for women only.[3]

The acceleration of State legislative action extending minimum wage and overtime to both sexes may have been stimulated in part by Federal amendments extending coverage of the minimum wage and overtime provisions of the FLSA in 1966 and 1974, but clearly title VII was a factor.

Maximum hours laws typify the kind of State statute which was repealed or overruled after enactment of title VII. To illustrate the variety and sequence of events, the next section includes a State by State summary of legislative and administrative events on maximum hours since the enactment of title VII. While other types of labor laws for women have not met with as much judicial and legislative attention, their status is

[2] For data on individual States, see p.7. Differing judicial and administrative rulings on the conflict between nondiscrimination laws and laws requiring overtime pay for women are discussed in Appendix A.

[3] See footnote 2.

clearly altered and can also best be understood in light of title VII guidelines and court decisions. Each State labor department can give information on the extent to which a particular law is in force in that State.

Maximum Hours

Today, no State law setting a daily and/or weekly work hours limitation for women only remains unchanged since enactment of title VII.[4]

> ***There is no Federal limitation of general applicability on daily or weekly hours. The FLSA does require most covered workers to be paid 1½ times the regular rate for hours worked beyond 40 a week.***

State hours laws for women, which began to be enacted in mid-nineteenth century, regulated not only maximum hours but in some cases days of rest, meal and rest periods, and nightwork also.

After Congress and some of the States required premium pay for overtime, several States relaxed maximum daily and weekly hours provisions for employers complying with overtime pay requirements.

In 1964, 40 States and the District of Columbia had maximum daily or weekly hours laws for women only in one or more occupations or industries. As shown in chart C, changes since enactment of title VII in 1964 have come through one or more of the following actions:

- — Legislatures repealed hours laws or changed the mandatory limit to allow voluntary overtime for women or to require premium pay for overtime;
- — Courts invalidated State hours laws as conflicting with title VII.
- — State attorney general opinions or administrative rulings invalidated hours laws as conflicting with title VII.

Two States—Illinois and Ohio—still enforce the provisions for employers of 14 or fewer workers, those not covered by title VII. The maximums in these States are 8 hours daily and 48 hours weekly.

Nightwork Limitations

The prohibition or regulation of nightwork by adult women remains in only 4 States — California, Kansas, Rhode Island, and Utah — and Puerto Rico. Kansas and Puerto Rico *prohibit* nightwork by adult women in some occupations or industries, whereas California, Rhode Island, and Utah *regulate* it. ***There is no comparable Federal law.***

Sex discrimination guidelines issued under title VII of the Civil Rights Act of 1964 state that laws restricting women's employment conflict with and are superseded by title VII (see Appendix A).

Nightwork provisions have not been rescinded or repealed in 2 other States—Ohio and Pennsylvania—but a court case and a State attorney general opinion have nullified them. In New Hampshire, the Department of Labor enforces the provision only for those female employees who desire its protection.

Occupational Limitations

Only Wyoming still prohibits women from working in mines. ***There is no comparable Federal prohibition.***

In Utah the law was amended to remove the absolute prohibition on women working in mines and instead allow the industrial commission to prohibit such work only if it finds it to be detrimental to the women's health and safety. There are women working in Utah mines.

Laws in three other States remain "on the books" but are no longer enforced. In a court case in Ohio, the law was found to be in conflict with title VII of the Civil Rights Act. In Oklahoma, there are no more underground mines. In Pennsylvania, an opinion by the attorney general declared the law to be superseded by the equal rights provision of the State constitution.

Laws and regulations prohibiting employment of women in establishments serving alcoholic beverages and other limitations based on occupation or working conditions are also generally no longer in effect because of conflict with title VII.

Weightlifting Limitations

In 1964 about a dozen jurisdictions had some sort of limitation (expressed in pounds, as a percentage of body weight, or simply "excessive") on the weight women workers could be required to lift or carry. Some of the limitations applied only to certain occupations or industries. Now only Puerto Rico has in effect a specific limit — 44 pounds — on the weight any woman worker can be required to lift (a limit of 110 pounds is set for men workers). ***There is no Federal weightlifting limit.***

A new Consolidated Work Order in Oregon prohibits requiring any employee, rather than just women, to lift "excessive weights." In Washington, emergency em-

[4] Maximum hours limitations for men have usually been limited to very hazardous occupations or those affecting public safety (for example, transportation); however, 7 States—Georgia, Mississippi, Montana, New Mexico, North Carolina, South Carolina and Washington—have hours limitations in effect covering both men and women in one or more other specified occupations or industries, such as a 10-hour limit in textiles.

RECAP OF STATE MAXIMUM HOURS LAWS FOR WOMEN ONLY
1964-1975 (as of July 1)

State	Law in 1964	LEGISLATIVE DEVELOPMENTS		Court Case	Attorney General Opinion or Administrative Decision	Law Enforced for 14 or Fewer Employees
		Repeal	Voluntary Overtime (Women)			
ALABAMA						
ALASKA						
ARIZONA		1970				
ARKANSAS					1973	
CALIFORNIA				1971	1971	
COLORADO		1971				
CONNECTICUT		1973			1972	
DELAWARE		1965				
DISTRICT OF COLUMBIA					1970	
FLORIDA						
GEORGIA						
HAWAII						
IDAHO						
ILLINOIS				1970	1970, 1973	
INDIANA						
IOWA						
KANSAS					1969	
KENTUCKY		1974		1971	1972	
LOUISIANA				1971		
MAINE					1973	
MARYLAND		1972				
MASSACHUSETTS				1971	1970, 1971	
MICHIGAN		1975			1969	
MINNESOTA		1974			1972	
MISSISSIPPI					1969	
MISSOURI		1972		1971	1971	
MONTANA		1971				
NEBRASKA		1969				
NEVADA		1975				
NEW HAMPSHIRE					1971*	
NEW JERSEY		1971				
NEW MEXICO					1972	
NEW YORK		1970				
NORTH CAROLINA		1973**				
NORTH DAKOTA		1973			1969	
OHIO				1972		
OKLAHOMA					1969	
OREGON		1971				
PENNSYLVANIA				1971	1969	
PUERTO RICO						
RHODE ISLAND		1974			1970*	
SOUTH CAROLINA		1972				
SOUTH DAKOTA		1973			1969	
TENNESSEE					1972	
TEXAS			1971		1974***	
UTAH			1973			
VERMONT		1970				
VIRGINIA		1974				
WASHINGTON					1970, 1971	
WEST VIRGINIA						
WISCONSIN					1970	
WYOMING						

*Administrative rulings state that the employer may permit but not require women to work beyond the maximum limitation (voluntary overtime hours).
**However, women are now subject to a maximum hours limitation formerly applying to men only
***Attorney general ruled voluntary overtime amendment invalid because of conflict with title VII.

ployment standards effective from May 1 to August 1, 1975, provide that employees recruited for, employed in, or reassigned to jobs involving the lifting, carrying, pushing, or pulling of weights in excess of 20 pounds must be given prior notification of this element of the job and be instructed in proper lifting techniques.

Sex discrimination guidelines issued under title VII of the 1964 Civil Rights Act provide that State laws or administrative regulations which prohibit the employment of women in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits conflict with and are superseded by title VII (see Appendix A).

Although not rescinded or repealed, limits on weightlifting by women workers in California, Massachusetts, and Ohio have been nullified by a court case or State attorney general opinion.

It should be noted that, even though courts have overruled arbitrary weight limits for women only, they have not thereby given employers sanction to require tasks beyond a person's strength, but rather require taking account of individual differences.[5]

Limitations on Employment Before and After Childbirth

Only New York and Puerto Rico still have in effect a provision concerning the employment of women before and/or after childbirth. ***There is no Federal statute in this area.***

Sex discrimination guidelines issued under title VII of the Civil Rights Act of 1964 state that *laws* restricting women's employment conflict with and are superseded by title VII; moreover, *employers* may not discriminate against applicants or employees because of pregnancy (see Appendix A).

It was not until the most recent revision of the EEOC sex discrimination guidelines, in April 1972, that the agency specifically listed State limitations on employment of pregnant and immediately postpregnant women as among those found to discriminate on the basis of sex. Even before then, Vermont had repealed its ban on employment 2 weeks before and 4 weeks after childbirth. Connecticut and Massachusetts followed suit in repealing restrictions, and the attorney general of Missouri ruled that employers need no longer comply with the invalid State restriction. Pre- and post-pregnancy employment restrictions in Washington wage orders covering women and minors only in some occupations or industries are no longer enforced, following amendment of female and child labor laws in September 1973 to make them applicable to all persons in employment and eliminate distinctions between the sexes.

The New York law prohibiting employment for 4 weeks after childbirth was amended in 1973 to permit earlier return upon approval of a physician.

The Puerto Rico provision states that pregnant women employed in offices, commercial and industrial establishments, and public utilities are entitled to a rest which includes a period commencing 4 weeks before and ending 4 weeks after childbirth. During that period the women are to be paid one-half of their regular pay, and their jobs must be held for them. To claim these benefits, a woman worker in one of the named establishments must present a medical certification that her state of pregnancy requires the rest. Such certificates are procurable at any public medical facility, without cost. The postnatal rest period may be extended up to 12 additional weeks if a worker suffers a disability attributable to the birth. Discharging a pregnant worker without just cause and refusal to reinstate a worker after childbirth are punishable by fine or award of damages.

Meal Periods

Laws or wage orders in effect in 18 States and Puerto Rico require that meal periods — usually unpaid and varying from 20 minutes to 1 hour in duration — be allowed in some or all industries. ***There is no comparable Federal law.***

Sex discrimination guidelines issued under title VII of the 1964 Civil Rights Act provide that where meal periods are required for women they shall be provided for men also unless precluded by business necessity, in which case the employer shall not provide them for members of either sex (see Appendix A).

In the following jurisdictions meal periods must be allowed both men and women:

Illinois	Nevada	Oregon
Kentucky	New Hampshire	Puerto Rico
Massachusetts	New York	Washington
Nebraska	North Dakota	

In the following States meal period provisions apply to women only:

Arkansas	Kansas	Rhode Island
California	Louisiana	Utah
Colorado	New Mexico	

Wisconsin *recommends* a meal period of at least 30 minutes reasonably close to the usual meal period time or near the middle of a shift.

[5] A Federal appeals court has held that an employer had to allow its workers to demonstrate their ability to perform the weightlifting requirements of certain jobs. *Bowe v. Colgate-Palmolive*, 416 F. 2d 711 (1969). Moreover, the EEOC has taken the position that failure to reallocate job duties which have the effect of disqualifying a disproportionate number of females may be unlawful, where such a reallocation is feasible. Decision No. 73-0168.

Although coverage of men in some States came about through extension to them of provisions that previously covered women only, the provisions of other jurisdictions which applied to women only were nullified by a court case or an opinion by a State attorney general or a corporation counsel. Accordingly meal period requirements are no longer generally in effect in the following jurisdictions:

District of Columbia	Ohio	Pennsylvania
Maine		

Rest Periods

Laws or wage orders in effect in 10 States require 10-15 minute breaks or rest periods during working hours in one or more occupations or industries. ***There is no comparable Federal law.***

Sex discrimination guidelines issued under title VII of the 1964 Civil Rights Act provide that where rest periods are required for women they shall be provided for men also unless precluded by business necessity, in which case the employer shall not provide them for members of either sex (see Appendix A).

In the following States rest periods must be allowed both men and women:

Kentucky	North Dakota	Washington
Nevada	Oregon	

In the following States rest period provisions apply to women only:

Arkansas	Colorado	Wyoming
California	Utah	

Although coverage of men in 5 States came about through extension to them of provisions that previously covered women only, the rest period provisions of Pennsylvania and Puerto Rico which applied to women only were nullified by an opinion of a State attorney general and a court case.

Seating

A number of jurisdictions—through statutes, minimum wage orders, and other regulations—have established employment standards for women relating to plant facilities such as seats, lunchrooms, dressing rooms, restrooms, and toilet rooms.[6] Only seating provisions are included in this summary. ***There are no Federal requirements for seating.***

Sex discrimination guidelines issued under title VII of the 1964 Civil Rights Act provide that where physical facilities are required for women they shall be provided for men also unless precluded by business necessity, in which case the employer shall not provide them for members of either sex (see Appendix A).

Laws or regulations in effect in 22 States, the District of Columbia, and Puerto Rico require that seats be provided.

In the following States seats must be provided for both men and women:

Florida	Massachusetts	Oregon

In the following jurisdictions the law requires them only for women:

Alabama	Missouri[7]	Puerto Rico
Arkansas	Montana	Rhode Island
California	New Hampshire	Texas
District of Columbia	New Jersey	Utah
Georgia	New Mexico	West Virginia
Idaho	New York	Wisconsin
Louisiana	Oklahoma	Wyoming

Although coverage of men in Massachusetts and Oregon came about through legislative extension to them of provisions that previously covered women only, the provisions of Maine, Ohio, and Pennsylvania, which applied to women only, were nullified by a court case or an opinion by a State attorney general.

Occupational Safety and Health

More than 20 States operate occupational safety and health plans approved under the provisions of the Federal Occupational Safety and Health Act of 1970. The Federal act was created "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources."

The history of State legislation for the safety and health of workers dates back to the tragedies in hazardous industries in the 1800's and the disastrous Triangle Shirtwaist Company fire in which 146 employees, mostly women, lost their lives in 1911. By 1970 every State had enacted some type of occupational safety or health safeguards for particular industries, and many went further to grant general rulemaking authority to the State labor department, board of health, or an independent agency. Prior to 1970 Federal legislation was limited to very few industries except for companies covered under Federal contract as provided by the Walsh-Healey Act.

[6] Regulations issued under the Federal occupational safety and health law require that, in all places of employment, specified numbers of toilet facilities be provided in toilet rooms separate for each sex. However, where toilet rooms will be occupied by no more than one person at a time, can be locked from the inside, and contain at least one water closet, separate toilet rooms for each sex need not be provided.

[7] The State attorney general ruled, in keeping with title VII guidelines, that an employer must provide seats for men as well as women or prove that business necessity precludes such seats and not provide them for any employees

Replacing this patchwork of State and Federal programs, the Occupational Safety and Health Act of 1970 authorized a Federal plan which made provision for States at any time to assume responsibility for administration and enforcement of their own comparable laws. Federal funds are provided for up to 50 percent of the cost of enforcing approved State plans.

A State plan must be approved by the Secretary of Labor. Approval is forthcoming if the plan includes provisions "at least as effective as" those of the Federal program—provisions such as:

— an effective system for adopting or developing occupational safety and health standards.
— adequate numbers of qualified, trained inspectors to enforce these standards.
—adequate resources for the administration and enforcement of a State plan.

The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor continues discretionary enforcement within a State for at least 3 years after plan approval.

In some instances a State plan may be approved by the Secretary when it does not match all Federal provisions if assurances are given by the State that a program will be developed to full effectiveness within a maximum of 3 years from the date of approval. Some States have withdrawn their plans before or after approval.

Where no approved State plan is in effect, OSHA administers the Federal law. States retain the right to establish standards in areas where OSHA has set none.

The following list, as reported by OSHA's Office of State Plan Review and Evaluation, shows the status of each plan.

Status of State Plans

State Plans Approved	Date of Approval	Enabling Legislation Passed Yes	Enabling Legislation Passed No	Plans Submitted— States Notified of Additional Requirements Necessary for Approval	Enabling Legislation Passed Yes	Enabling Legislation Passed No
So. Carolina[1]	11/30/72	X		Alabama		X
Oregon[1]	12/22/72	X		Am. Samoa (to reg. office)	X	
Utah[1]	1/ 4/73	X		Arkansas		X
Washington	1/19/73	X		Delaware		X
No. Carolina[1]	1/26/73	X		District of Columbia		X
California	4/24/73	X		Florida		X
Minnesota	5/29/73	X		Guam	X	
Maryland	6/28/73	X		Idaho		X
Tennessee[1]	6/29/73	X		Massachusetts		X
Iowa	7/12/73	X		Missouri		X
Kentucky[1]	7/23/73	X		New Mexico	X	
Alaska	7/31/73	X		Oklahoma		X
Virgin Islands	8/31/73	X		Puerto Rico (to reg. office)	X	
Colorado[1]	9/ 7/73	X		Rhode Island	X	
Michigan	9/25/73	X		Texas		X
Vermont[1]	10/ 1/73	X		W. Virginia		X
Connecticut	12/28/73	X				
Hawaii	12/28/73	X				
Nevada	12/28/73	X				
Indiana	2/25/74	X				
Wyoming	4/25/74	X				
Arizona	10/29/74	X				
TOTAL 22		22		TOTAL 16	5	11

Other

Plans Withdrawn by States					
Before Approval		After Approval		Formal Rejection Proceedings Commenced	No Plans Submitted
Pennsylvania	3/21/73	N. Dakota	7/23/73	Virginia[2]	Ohio
Georgia	4/27/73	Montana	6/27/74		Louisiana
New Hampshire	10/14/73	New Jersey	3/31/75		Kansas
Mississippi	1/23/75	New York	6/30/75		Nebraska
Maine	6/24/75	Illinois	6/30/75		South Dakota
		Wisconsin	6/30/75		Trust Territories
TOTAL 5		6		1	6

[1] States with "Operational Agreements" published in *Federal Register*
[2] Rejection proceeding being held in abeyance pending decision on revised legislation

Decisions Ahead

This pamphlet has summarized State labor laws of special interest to women, noting the increasing emphasis on equal employment opportunity for women (and men) and the altered status of laws "for women only" since the enactment of title VII of the Federal Civil Rights Act of 1964. While many States have acted to extend minimum wage and overtime provisions to men, and many have repealed or ceased enforcing restrictions superseded by title VII, some of the problems that gave rise to "protective laws" remain unresolved.

For example, some employees of both sexes still find that long hours and arbitrary scheduling make it difficult to impossible for them to meet the dual obligations they have with work and family or other personal responsibilities. Bills to make overtime voluntary for employees except in specified emergency situations have been introduced in a few States, but not enacted except for one that applies to handicapped employees and those 66 years of age and over. Voluntary overtime, flexible work schedules, and removal of barriers for part-time employment are all subjects of collective bargaining and proposed legislation. At least 3 States have granted an industrial welfare commission authority to regulate hours of employees.

Modern technology has removed some hazards from the workplace and added others. For example, automation and redesign have greatly lessened the lifting demands of many jobs. Hazards have arisen from the increased use of radiation and toxic substances in industry, research, and hospitals.

State and Federal initiatives will interplay on determining labor standards in the future as in the past. Problems addressed decades ago require new approaches in the seventies and give opportunity for State legislatures to take leadership in assuring healthful and productive working conditions for women and men.

Appendix A

Title VII of the Civil Rights Act of 1964

Several sections of this pamphlet have noted that title VII has caused a change in status of State laws for women only. Effective July 2, 1965, the act prohibits discrimination based on sex as well as race, color, religion, and national origin in all terms and conditions or privileges of employment. Provisions of the law are broad enough to encompass new and emerging forms of discrimination.

Title VII is administered by the bipartisan Equal Employment Opportunity Commission (EEOC), whose five members are appointed by the President. Initially powers of the EEOC were limited largely to investigation and conciliation, but in 1972 the act was amended to strengthen enforcement as well as extend coverage.

The act now covers public and private employers of 15 or more employees (excluding elected or appointed officials of State and local governments), public and private employment agencies, labor unions with 15 or more members or agencies which refer persons for employment or which represent employees of employers covered by the act, joint labor-management apprenticeship programs of covered employers and unions, and educational institutions.

Unlawful practices, if based on *sex,* race, color, religion, or national origin include:

For an employer
to discriminate in hiring or firing, wages and salaries, promotions, or any terms, conditions, or privileges of employment;

For a labor union
to discriminate in membership, classification or referrals for employment; or to cause or attempt to cause an employer to discriminate;

For an employment agency
to discriminate in classifying or referring for employment;

For any employer, labor union, or joint labor-management committee
to discriminate in training, retraining, or apprenticeship or to print or publish advertisements indicating discriminatory preference or limitation.

Exceptions are permitted when sex is a bona fide occupational qualification reasonably necessary to the normal operation of the business (as in the case of an actor or a wet nurse). Religious institutions may employ persons of a particular religion to further their activities. Also, differentials in compensation may be based on a seniority, merit, or incentive system.

The right to file a charge of discrimination is protected by the law. Title VII prohibits an employer from taking, or encouraging others to take, any action against a person for filing a charge of discrimination.

The EEOC has issued sex discrimination guidelines which interpret the "bona fide occupational qualification" very narrowly. The EEOC guidelines declare that State laws that prohibit or limit employment of women (in certain occupations, in jobs requiring the lifting or carrying of specified weights, for more than a specified number of hours, during certain hours of the night, and immediately before and after childbirth) discriminate on the basis of sex, because they do not take into account individual capacities and preferences. Thus, they conflict with and are superseded by title VII. A series of court cases upheld this guideline, and the conflict between State and Federal laws on this point was for the most part resolved in the early 1970's.

Regarding State laws that require minimum wage and premium overtime pay only for women, on the other hand, EEOC deems it an unlawful practice for an employer to refuse to hire women in order to avoid payment of such benefits or not to provide them for men.

Similar provisions apply to other sex-oriented State employment laws such as those requiring special rest and meal periods or physical facilities for women; if an employer can prove that business necessity precludes providing these benefits to both men and women, he or she must not provide them to members of either sex.

When a law is relatively new, the interpretations of the enforcing agency are frequently challenged in the courts. EEOC has been upheld on many points, and the Supreme Court has said that its administrative interpretations should be given great deference.[1] Appeals courts have offered conflicting opinions on the guideline that would harmonize State minimum wage laws for women with title VII by requiring the same benefits for men, however, and the Supreme Court in June 1975 invited the Solicitor General to file a brief on the question.

In Arkansas an employer asked the court to declare that the State law requiring overtime pay for women was superseded by title VII. Both district and appeals courts found instead that there was *no* conflict between the State and Federal law because the employer could comply with both statutes by paying men and women the overtime rate which the State required for women. *Potlatch Forests, Inc.* v. *Hays et al.*, 318 F. Supp. 1368, aff'd, 465 F. 2d. 1081 (1972).

In ruling on a similar California law, another appeals court rejected this reasoning and found the State law in conflict with title VII and unenforceable. The court held that an interpretation which would expand the class of persons to benefit from the State law would take law-making power away from the State legislature. *Homemakers, Inc.* v. *Division of Industrial Welfare,* 509 F. 2d. 20 (1974).

The full text of EEOC sex discrimination guidelines follows on page 19. (section 1604.2(b) deals with the effect of sex-oriented State employment legislation).

Single copies of the following related publications are available without charge upon request to the Women's Bureau, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210:

A Working Woman's Guide to Her Job Rights. Revised 1975.

Brief Highlights of Major Federal Laws and Order on Sex Discrimination. June 1974.

State Hours Laws for Women: Changes in Status Since the Civil Rights Act of 1964. April 1974.

1975 Handbook on Women Workers.

Women's Bureau Publications List.

Also, single copies of the following are available without charge upon request to the Division of State Employment Standards, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210:

State Minimum Wage Laws: A Chartbook on Basic Provisions. Labor Law Series No. 4-A. May 1974.

[1] *Griggs et al.* v *Duke Power Co.*, 401 U.S. 424 (1971). In the same decision, the Court enunciated the important principle that discrimination need not be intentional to be unlawful. Thus, under the Civil Rights Act ". . . practices, procedures . . . neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices. . . . Congress directed the thrust of the Act to the consequences of employment practices, not simply the motivation."

Title 29—LABOR

Chapter XIV—Equal Employment Opportunity Commission

PART 1604—GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

By virtue of the authority vested in it by section 713(b) of title VII of the Civil Rights Act of 1964, 42 U.S.C., section 2000e–12, 78 Stat. 265, the Equal Employment Opportunity Commission hereby revises Title 29, Chapter XIV, Part 1604 of the Code of Federal Regulations.

These Guidelines on Discrimination Because of Sex supersede and enlarge upon the Guidelines on Discrimination Because of Sex, issued by the Equal Employment Opportunity Commission on December 2, 1965, and all amendments thereto. Because the material herein is interpretive in nature, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rule making, opportunity for public participation, and delay in effective date are inapplicable. The Guidelines shall be applicable to charges and cases presently pending or hereafter filed with the Commission.

Sec.

AUTHORITY: The provisions of this Part 1604 issued under sec. 713(b), 78 Stat. 265, 42 U.S.C. sec. 2000e–12.

§ 1604.1 General principles.

(a) References to "employer" or "employers" in this Part 1604 state principles that are applicable not only to employers but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities.

(b) To the extent that the views expressed in prior Commission pronouncements are inconsistent with the views expressed herein, such prior views are hereby overruled.

(c) The Commission will continue to consider particular problems relating to sex discrimination on a case-by-case basis.

§ 1604.2 Sex as a bona fide occupational qualification.

(a) The Commission believes that the bona fide occupational qualification exception as to sex should be interpreted narrowly. Labels—"Men's jobs" and "Women's jobs"—tend to deny employment opportunities unnecessarily to one sex or the other.

(1) The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception:

(i) The refusal to hire a woman because of her sex based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.

(ii) The refusal to hire an individual based on sterotyped characterizations of the sexes. Such steretoypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of nondiscrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.

(iii) The refusal to hire an individual because of the preferences of coworkers, the employer, clients or customers except as covered specifically in subparagraph (2) of this paragraph.

(2) Where it is necessary for the purpose of authenticity or genuineness, the Commission will consider sex to be a bona fide occupational qualification, e.g., an actor or actress.

(b) Effect of sex-oriented State employment legislation.

(1) Many States have enacted laws or promulgated administrative regulations with respect to the employment of females. Among these laws are those which prohibit or limit the employment of females, e.g., the employment of females in certain occupations, in jobs requiring the lifting or carrying of weights exceeding certain prescribed limits, during certain hours of the night, for more than a specified number of hours per day or per week, and for certain periods of time before and after childbirth. The Commission has found that such laws and regulations do not take into account the capacities, preferences, and abilities of individual females and, therefore, discriminate on the basis of sex. The Commission has concluded that such laws and regulations conflict with and are superseded by title VII of the Civil Rights Act of 1964. Accordingly, such laws will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(2) The Commission has concluded that State laws and regulations which discriminate on the basis of sex with regard to the employment of minors are in conflict with and are superseded by title VII to the extent that such laws are more restrictive for one sex. Accordingly, restrictions on the employment of minors of one sex over and above those imposed on minors of the other sex will not be considered a defense to an otherwise established unlawful employment practice or as a basis for the application of the bona fide occupational qualification exception.

(3) A number of States require that minimum wage and premium pay for overtime be provided for female employees. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the payment of minimum wages or overtime pay required by State law; or

(ii) It does not provide the same benefits for male employees.

(4) As to other kinds of sex-oriented State employment laws, such as those requiring special rest and meal periods or physical facilities for women, provision of these benefits to one sex only will be a violation of title VII. An employer will be deemed to have engaged in an unlawful employment practice if:

(i) It refuses to hire or otherwise adversely affects the employment opportunities of female applicants or employees in order to avoid the provision of such benefits; or

(ii) It does not provide the same benefits for male employees. If the employer can prove that business necessity precludes providing these benefits to both men and women, then the State law is in conflict with and superseded by tile VII as to this employer. In this situation, the employer shall not provide such benefits to members of either sex.

(5) Some States require that separate restrooms be provided for employees of each sex. An employer will be deemed to have engaged in an unlawful employment practice if it refuses to hire or otherwise adversely affects the employment opportunities of applicants or employees in order to avoid the provision of such restrooms for persons of that sex.

§ 1604.3 Separate lines of progression and seniority systems.

(a) It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression; and vice versa.

(2) A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.

(b) A Seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

§ 1604.4 Discrimination against married women.

(a) The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by title VII of the Civil Rights Act. It does not seem to us relevant that the rule is not directed against all females, but only against married females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.

(b) It may be that under certain circumstances, such a rule could be justified within the meaning of section 703 (e)(1) of title VII. We express no opinion on this question at this time except to point out that sex as a bona fide occupational qualification must be justified in terms of the peculiar requirements of the particular job and not on the basis of a general principle such as the desirability of spreading work.

§ 1604.5 Job opportunities advertising.

It is a violation of title VII for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns classified by publishers on the basis of sex, such as columns headed "Male" or "Female," will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

§ 1604.6 Employment agencies.

(a) Section 703(b) of the Civil Rights Act specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. The Commission has determined that private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

(b) An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupations qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification.

(c) It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.

§ 1604.7 Pre-employment inquiries as to sex.

A pre-employment inquiry may ask "Male _____, Female _____"; or "Mr. Mrs. Miss," provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

§ 1604.8 Relationship of Title VII to the Equal Pay Act.

(a) The employee coverage of the prohibitions against discrimination based on sex contained in title VII is coextensive with that of the other prohibitions contained in title VII and is not limited by section 703(h) to those employees covered by the Fair Labor Standards Act.

(b) By virtue of section 703(h), a defense based on the Equal Pay Act may be raised in a proceeding under title VII.

(c) Where such a defense is raised the Commission will give appropriate consideration to the interpretations of the Administrator, Wage and Hour Division, Department of Labor, but will not be bound thereby.

§ 1604.9 Fringe benefits.

(a) "Fringe benefits," as used herein, includes medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

(b) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

(c) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima facie violation of the prohibitions against sex discrimination contained in the Act.

(d) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees. An example of such an unlawful employment practice is a situation in which wives of male employees receive maternity benefits while female employees receive no such benefits.

(e) It shall not be a defense under title VIII to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

(f) It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex. A statement of the General Counsel of September 13, 1968, providing for a phasing out of differentials with regard to optional retirement age for certain incumbent employees is hereby withdrawn.

§ 1604.10 Employment policies relating to pregnancy and childbirth.

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

Effective date. This revision shall become effective on the date of its publication in the FEDERAL REGISTER (4–5–72).

Signed at Washington, D.C., this the 31st day of March 1972.

WILLIAM H. BROWN III,
Chairman.

[FR Doc.72–5213 Filed 3–31–72;4:30 pm]

Footnotes to Appendix B

[1] These laws vary greatly in occupations and industries to which they apply and in the extent to which enforcement machinery is provided. While minimum wage and anti-discrimination laws in most States have broad coverage, other laws often apply only to specified occupations or industries. Details of coverage are available from State agencies.

[2] The equal pay column lists only separate equal pay laws, *not* equal pay requirements contained in a broader civil rights law. The sex discrimination column lists States having a broad civil rights law which includes sex as one of the prohibited bases of discrimination in employment. The age discrimination column lists any State prohibiting age discrimination in *either* a separate law or as part of a broader civil rights law.

[3] A Federal Circuit Court has ruled that men must also be paid for overtime in order to comply with title VII of the Civil Rights Act of 1964.

[4] The Division of Industrial Welfare is presently operating according to 1968 wage orders (except for their minimum wage provisions) applying to women only; new hours and working conditions orders applying to both men and women were promulgated early in 1974, but were stayed by a court order. The minimum wage order promulgated in 1974 is not affected by the court order.

[5] Persons over 66 years of age, handicapped workers, and disabled veterans may not work more than 9 hours per day or 48 hours per week without their consent; the latter two categories require medical certification.

[6] The State Supreme Court found this law impliedly repealed by enactment of the Idaho Fair Employment Practices Act, the Idaho Civil Rights Law, and the Idaho equal pay law.

[7] The law provides for wage orders for women, but no minimum wage order is in effect.

[8] In 1942, Michigan adopted weightlifting standards for women, but they were never incorporated into law. The State's penal code, however, provides that no female shall be given any task disproportionate to her strength.

[9] The State attorney general ruled that an employer must provide seats for men as well as women or prove that business necessity precludes providing such seats and not provide them for any employee.

[10] The Department of Labor enforces the law only for those female employees who do not wish to work hours in excess of maximum hours.

[11] The law permits waiver of payment up to 54 hours per week by written agreement between employer and employee.

[12] Employment within first month after childbirth permitted upon written request by employee and written opinion of qualified physician.

[13] The Department of Labor says the law is not enforced since there are no more undeground mines in the State.

[14] A State attorney general opinion states that the 1913 Women's Labor Law is impliedly repealed because it conflicts with a later State Human Relations Act.

[15] A 1974 attorney general opinion states the law is superseded by equal rights provisions of the State constitution.

[16] Time and a half the regular rate after 8 hours daily and 40 hours weekly and double time after 48 hours, except for certain industry wage orders which provide for double time after 8 hours daily and 40 or 44 hours weekly. For women, triple the regular rate after 12 hours daily and 72 hours weekly if not covered by FLSA, or after 60 hours weekly if covered by FLSA.

[17] Transportation must be assured. In Utah, facilities for securing hot food or drink or heating food or drink must also be assured.

[18] The law no longer stipulates maximum hours, but it does stipulate that overtime be voluntary.

[19] Standard conditions of labor for women, including provisions on meal periods, rest periods, seats, nightwork, maternity, and lifting, contained in Industrial Welfare Committee orders, are still "on the books" but are not enforced. A 1973 law gave the committee the authority to prescribe rules and regulations fixing standards, conditions, and hours of labor of employees (men and women); effective May 1, 1975, the committee adopted standards on meal periods, rest periods, and weightlifting on a 90-day emergency basis, and they will hold a public hearing later in the year to propose their permanent adoption. There is also a law which limits the working hours of male and female household workers to 60 per week.

Appendix B

Chart of Selected State Laws Affecting Women in Private Industry[1]

STATE	MINIMUM WAGE	PREMIUM PAY FOR OVERTIME		EQUAL PAY[2]	SEX DISCRIMINATION IN EMPLOYMENT PROHIBITED	AGE DISCRIMINATION IN EMPLOYMENT PROHIBITED	MEAL PERIOD	REST PERIOD
Alabama								
Alaska	X	8-40	X	X	X	X		
Arizona				X	X			
Arkansas	X	8-48[3]	W	X			W	W
California	X	8-40/48[4]	W	X	X	X	W[4]	W[4]
Colorado	W	40/42	W	X	X	X	W	W
Connecticut	X	40/48	X	X	X	X		
Delaware	X				X	X		
District of Columbia	X	40	X		X	X	(W)	
Florida				X	X			
Georgia	X			X		X		
Hawaii	X	40	X	X	X	X		
Idaho	X	8-48[6]	W	X	X	X		
Illinois	X			X	X	X	X	
Indiana	X			X	X	X		
Iowa					X	X		
Kansas	[7]				X		W	
Kentucky	X	40	X	X	X	X	X	X
Louisiana	[7]					X	W	
Maine	X	40	X	X	X	X	(W)	
Maryland	X	40	X	X	X	X		
Massachusetts	X	40	X	X	X	X	X	
Michigan	X	46	X	X	X	X		
Minnesota	X	48	X	X	X			
Mississippi								
Missouri				X	X			
Montana	X	40	X	X	X	X		
Nebraska	X			X	X	X	X	
Nevada	X	8-40	X	X	X	X	X	X
New Hampshire	X	8	X	X	X	X	X	
New Jersey	X	40	X	X	X	X		
New Mexico	X	48[11]	X		X	X	W	
New York	X	40/44	X	X	X	X	X	
North Carolina	X	50	X					
North Dakota	X	48	X	X		X	X	X
Ohio	X	40	X	X	X	X	(W)	
Oklahoma	X			X	X			
Oregon	X	40	X	X	X	X	X	X
Pennsylvania	X	40	X	X	X	X	W[14]	W[14]
Puerto Rico	X	8-40/48[16]	X		X	X	X	(W)
Rhode Island	X	40	X	X	X	X	W	
South Carolina					X	X		
South Dakota	X			X	X			
Tennessee				X				
Texas	X	(9-40	W)					
Utah	W				X	X	W	W
Vermont	X	40	X		X			
Virginia	X			X				
Washington	X	40	X	X	X	X	X[19]	X[19]
West Virginia	X	46	X	X	X	X		
Wisconsin	W	9-48	W		X	X		
Wyoming	X	8-48	W	X	X			W
United States	**X**	**40**	**X**	**X**	**X**	**X**		

W indicates that the law applies to women only. X indicates that the law applies to both men and women.
Parentheses indicate that courts, opinions by State attorneys general, or administrative rulings have held these laws to be in conflict with title VII of the Civil Rights Act of 1964.

SEATS REQUIRED	MAXIMUM HOURS	NIGHTWORK	EMPLOYMENT REGULATED OR PROHIBITED			STATE
			Before and after childbirth	In mines	In jobs lifting heavy weights	
W						Alabama
						Alaska
						Arizona
W	(W)					Arkansas
W[4]	(W)	W[4]			(W)	California
						Colorado
	[5]					Connecticut
						Delaware
W	(W)					District of Columbia
X						Florida
W	X					Georgia
						Hawaii
W						Idaho
	(W)					Illinois
						Indiana
						Iowa
	(W)	W				Kansas
						Kentucky
W	(W)					Louisiana
(W)	(W)					Maine
						Maryland
X	(W)				(W)	Massachusetts
					[8]	Michigan
						Minnesota
	X					Mississippi
W[9]			(W)			Missouri
W	X					Montana
						Nebraska
						Nevada
W	(W)[10]	(W)[10]				New Hampshire
W						New Jersey
W	X					New Mexico
W			W[12]			New York
	X					North Carolina
						North Dakota
(W)	(W)	(W)		(W)	(W)	Ohio
W	(W)			W[13]		Oklahoma
X					X	Oregon
W[14]	(W)[14]	W[14]		W[15]		Pennsylvania
W		W	W		X	Puerto Rico
W		W[17]				Rhode Island
	X					South Carolina
						South Dakota
	(W)					Tennessee
W	(W)					Texas
W	[18]	W[17]		W		Utah
						Vermont
						Virginia
	X[19]				[19]	Washington
W						West Virginia
W	(W)					Wisconsin
W				W		Wyoming
						United States

U.S. GOVERNMENT PRINTING OFFICE 1976 O 201 561

U.S. Department of Labor
Employment Standards Administration
Women's Bureau
Washington, D.C. 20210

Official Business
Penalty for private use, $300

Postage and Fees Paid
U.S. Department of Labor

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Lab-441